10-238 and 10-239

In the

Supreme Court of the United States

JOHN MCCOMISH, NANCY MCLAIN, and TONY BOUIE,

Petitioners,

-against-

KEN BENNETT, in his official capacity as Secretary of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, LOUIS HOFFMAN and LORI DANIELS, in their official capacities as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MUNICIPAL BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Given that long-term practical experience with tiered public funds in public campaign financing demonstrates they do not deter the exercise of free speech by non-participants, did the Ninth Circuit correctly apply an intermediate level of scrutiny to Arizona's Clean Elections Act, and under that analysis, find those payments are justified by the compelling and important state interest in reducing actual or perceived corruption, encouraging participation in public financing programs, and promoting robust and competitive elections?

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A Citizen's Guide to the New York City Campaign Finance Board (January 2011) http://www.nyccfb.info/PDF/press/agency-brochure.pdf?sm=press_21dthe 2006 8

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Lance Williams and Chuck Finnie, *Gusher of 'Soft Money' a Bonanza for San Francisco Mayor*, S.F. Examiner, May 2, 2001 15

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INTEREST OF THE *AMICUS CURIAE*

The New York City *Amicus*

In 1988, the New York City Council responded to widely reported local "pay to play" scandals by creating an innovative system of public financing for campaigns. In its legislative findings, the Council determined that "both the possibility of privilege and favoritism and the appearance of impropriety harm the effective functioning of government" and that corruption "has a deleterious effect upon government in that it creates the appearance of such abuses and thereby gives rise to citizen apathy and cynicism."[1]

The authors of the City's Campaign Finance Act ("CFA") resolved to address that public perception, as well as improve governmental ethics and popular understanding of local issues, increase participation in elections by voters and candidates, and enhance public confidence in government. They did this by creating a program built on the premise that competitive, corruption-free campaigns that actively engaged citizens could be financed with a combination of small private donations and public funds. When the Act was signed into law by then-Mayor Ed Koch, New York City became the largest municipality in the nation to adopt publicly financed elections. Today, New York City's public financing program is considered one of the most

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[1] Local Law of the City of New York No. 8 § 1 (1988).

No counsel for a party authored this brief and no counsel or party made a monetary contribution intended to fund this brief.

successful in the country and "a model for campaign reformers nationwide."[2]

An essential element of the City's program are "bonus" provisions, which come into play when a program participant faces a high-spending non-participant. In 1989, businessman Ronald Lauder spent $13 million (the vast majority of it his own money) in his failed bid for the Republican nomination for mayor. His spending in that race triggered the program's first bonus payment; his opponent in that race was a former federal prosecutor named Rudolph Giuliani. Since that time, bonus payments have been paid in 58 more City elections.

Perhaps no other public financing program, at any level of government, has had more practical experience with how bonus provisions actually work. And after more than two decades of experience, there is simply no empirical data to support the notion, on which petitioners rest their First Amendment claim, that bonus payments somehow inhibit a non-participant's speech.

The City's extensive experience with bonus provisions also confirms the critical role they play in advancing genuine and meaningful campaign finance reform and the important and compelling government interest in combating actual and perceived corruption.

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[2] Editorial, *A Hard Act to Follow*, N.Y. Times, June 4, 2006, §14, at 15.

The San Francisco *Amicus*

In November 2000, San Francisco voters adopted a public financing program for candidates for the City's Board of Supervisors. In 2006, San Francisco expanded its public financing program to include candidates for Mayor. San Francisco's public financing scheme is a "partial" public financing program: it requires participants to raise contributions from private sources before receiving any matching public funds. Like Arizona's system, a central element of San Francisco's program is its "trigger" mechanism. After a participating candidate qualifies, the candidate is initially subject to a spending limit, but spending by other candidates and third-parties over a certain level "triggers" an incremental increase in the spending caps for participating candidates. When San Francisco raises a participating candidate's spending limit, the candidate becomes eligible for additional public funds, but only if the candidate first raises additional contributions from private sources.

Since the inception of its public financing program, San Francisco has balanced two competing concerns: encouraging viable candidates to participate in the program by offering sufficient funds to make them competitive against privately funded political opponents, and ensuring that public funds are not expended needlessly. The program's trigger mechanism, because it makes matching public funds available only when necessary, is the best – and perhaps the only – policy response that appropriately balances those competing concerns. Like many local and state governments, San Francisco is facing unprecedented budget shortfalls and will continue

to wrestle with fiscal challenges for the foreseeable future. And beyond its near-term fiscal difficulties, San Francisco must be a responsible steward of public funds and allocate its taxpayer dollars as efficiently as possible. Without the ability to use trigger mechanisms, local governments like San Francisco would be forced to choose between two equally unpalatable options: a public financing program that viable candidates would refuse to join or a program that unnecessarily consumes limited public funds. Either option could ultimately lead to the end of public financing in many jurisdictions, including San Francisco.

Moreover, ten years of experience in San Francisco indicate that trigger mechanisms do not deter fund-raising or political spending by candidates or third parties. In fact, the levels of spending in San Francisco elections have significantly increased since the voters adopted public financing in 2000.

The IMLA *Amicus*

The International Municipal Lawyers Association ("IMLA") is a non-profit, professional organization of over 3500 local government entities, including cities, counties, and special district entities, as represented by their chief legal officers, state municipal leagues, and individual attorneys. Since 1935, IMLA has served as a national, and now international, clearinghouse of legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme

Court, in the United States Courts of Appeals, and in state supreme and appellate courts.

IMLA believes that with the ever-increasing cost of political campaigns and the concomitant governmental interest in assuring free and open elections, state and local governments must create methods by which campaigns can be financed through public dollars, thereby allowing all candidates to express their political message. IMLA believes that because these programs depend on public finances, they must be carefully constructed to prevent limitless spending while making sufficient funds available to draw the participation of a wide-range of candidates. IMLA believes that the trigger mechanism used in Arizona provides one of the few method to reach these goals and that without this mechanism, state and local governments would lose a vital tool necessary to protect the democratic nature of the electoral process.

Thus, pursuant to Supreme Court Rule 37.4, the City of New York, Mayor Michael R. Bloomberg, the New York City Council, Public Advocate Bill de Blasio, the New York City Campaign Finance Board, the City and County of San Francisco, and the International Municipal Lawyers Association submit this brief *amicus curiae* in support of the respondents.

SUMMARY OF THE ARGUMENT

Public financing of campaigns serves well-recognized governmental interests: it reduces corruption and the appearance of corruption by eliminating the improper influence of large private contributions and relieving candidates from the

rigors of soliciting private contributions. As this Court recognized in *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976), public financing enhances the First Amendment because it is the use of public money "to facilitate and enlarge public discussion and participation in the electoral process . . . ."

Buckley also recognizes that public financing programs may condition the receipt of public funds on a voluntary agreement to limit expenditures. 424 U.S. at 57, n.65. As a practical matter, however, few candidates would voluntarily participate in a public financing program involving voluntary spending limits if those limits effectively precluded their ability to mount a competitive campaign against a high-spending oppon ent who has no spending limit. Bonus payments make these races competitive in a fiscally prudent and targeted way. And more importantly, they encourage candidates to join a public financing program that does not penalize them when an opponent refuses to join. Without these mechanisms, public financing programs that advance a municipality's substantial and compelling interest in eliminating actual or perceived corruption in its political process will be unable to accomplish that goal, because no viable candidates will participate.

Bonus provisions also produce more speech that helps to build a robust representative democracy. They increase debate about issues of public concern, and they therefore necessarily promote exactly the kind of free and open debate the First Amendment fosters and protects. Indeed, because democracy demands that kind of informed debate, this Court has long recognized that the First Amendment embraces government funding of particular speakers, such as "aid to public

broadcasting and other forms of educational media, and preferential postal rates and antitrust exemptions for newspapers." *Buckley*, 424 U.S. at 93, n.127.

At the same time, there is no evidence that non-participants intentionally limit their own spending so as not to trigger additional payments to candidates they oppose. To the contrary, data from two decades of New York City elections, as well as the experience of San Francisco, establish exactly the opposite conclusion.

As this Court has also recognized, "the central purpose" of the First Amendment is "to assure a society in which 'uninhibited, robust, and wide-open' public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish." *Buckley*, 424 U.S. 93, n.127, *quoting New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Our electoral system works best when two or more strong candidates compete for the support of their fellow citizens. That is what makes the exercise of the franchise meaningful.

STATEMENT OF FACTS

The New York City Experience

The New York City Campaign Finance Program ("the Program") is the voluntary government reform program established by the New York City Campaign Finance Act. The independent, non-partisan Campaign Finance Board administers the Program through which it provides public matching funds to participating candidates running for Mayor, Comptroller, Public

Advocate, Borough President, and City Council member. In return, participating candidates agree to abide by strictly-enforced spending limits and other limits on self-financing and contributions. The law also imposes certain requirements on non-participants regarding complete and timely disclosure of their financial transactions, and all campaigns are subject to rigorous auditing by the Campaign Finance Board.[3]

The overarching goals of the Program are to encourage grassroots support for candidates by average New Yorkers, require full disclosure of campaign fundraising practices, and combat the public perception of corruption in the political process by decreasing a candidate's dependence on large contributions. The Program helps credible candidates run competitive campaigns whether or not they have access to "big money," giving New Yorkers greater choices at the voting booth.

Public funds are only a portion of the money spent by candidates, and they are capped at 55 percent of the spending limit for the office the candidate is seeking. The Program encourages participants to seek small contributions, and reach out to a greater number of their prospective constituents. That, in turn, increases citizen interest and participation in elections. Only contributions from New York City residents are matched with public funds. Contributions from political action committees, unions, lobbyists, or persons doing business with the City are not

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[3] These facts are taken from *A Citizen's Guide to the New York City Campaign Finance Board* (January 2011), http://www.nyccfb.info/PDF/press/agency-brochure.pdf?sm=press_21dthe 2006.

matchable. The match is limited to the first $175 of an eligible contribution. Because the basic matching funds rate is $6-to-$1, that $175 contribution can be matched with $1,050 in public dollars, resulting in a total of $1,225 for the campaign.[4]

In the last 22 years, the City's voluntary public financing program has disbursed more than $101.2 million in matching funds to 543 candidates. The distinguishing feature of the Program – its system of matching individual donations in a way that supercharges small donations – is in large measure the reason for the Program's success. Under the Program, a New York City candidate can finance a viable campaign based on small donations, and the City's experience shows that an increasing number of them now do just that. In 2009, 95 percent of all candidates who were elected were Program participants.

The Program has also had a profound effect in encouraging broader participation in the political process. *Small Donor Matching Funds: The NYC Election Experience*, a 2010 report by the Brennan Center for Justice, found that the Program has not just increased donor participation, it has also expanded the pool of donors to encompass what the

[4] Contributions to all city candidates are subject to the following limits: $4,950 for Mayor, Public Advocate and Comptroller, $3,850 for Borough President, and $2,750 for City Council. N.Y.C. Admin. Code § 3-703(1)(f). There are additional contributions limits imposed on persons doing business with the City. *Id.* at § 3-703(1-a).

report describes as "a more diverse and inclusive political culture."[5]

Competition also increased. Even with a limited number of open seats, five City Council incumbents were unseated by challengers. Other incumbents won by slimmer margins, and more faced primaries, and the average margins of victory were closer than in previous elections. More than half of all participants in 2009 – 101 candidates – were seeking city office for the first time.[6]

Additionally, candidates, motivated by the Program's matching formula, are now placing a greater emphasis on soliciting smaller contributions. In 2009, 68.9 percent of all individual contributors gave $175 or less to candidates, up from 56.5 percent in 2005. Most significantly, in 2009 more than half of all contributors – 30,000 New Yorkers – contributed to City elections for the first time. This proves how effective the matching of small donations is as a campaign financing model, and how dramatically candidates are expanding their fundraising base beyond a core of reliable large donors.

In short, more New Yorkers are investing in the political process for the first time – as contributors, as candidates, and as successful

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[5] Angela Migally & Susan Liss, *Small Donor Matching Funds: The NYC Election Experience*, 13 (2010) http://brennan.3cdn.net/8116be236784cc923f_iam6bemvw.pdf

[6] These facts are from *New Yorkers Make Their Voices Heard: Report on the 2009 Elections* (2010) http://www.nycfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf

elected officials. And the City's public financing program is giving a voice to many who otherwise would be unable to run a competitive campaign.

To assure candidates in competitive races that they will have sufficient funds to run a viable campaign, the Program has also provided for "bonus" payments (N.Y.C. Admin. Code §§3-706[3][a] and [b]). They come into play when an otherwise competitive candidate faces off against a high-spending candidate who is not a Program participant. Under a Tier 1 bonus situation (when the nonparticipating opponent raises or spends more than 50 percent of the spending limit for the participant), the $1,050 in funds for a $175 contribution rises to $1,250, and the spending limit is increased to 150 percent of the regular spending limit. Under Tier 2 (when the nonparticipating opponent raises or spends three times the spending limit), $1,500 in public funds is available for a $175 contribution, and the spending limit is removed. New York City participants must gather private support from New Yorkers to maximize their access to additional public funds.[7]

Funds attributable to bonus payments are a very small percentage of the total funds distributed through the Program. As of 2006, those public funds accounted for only four percent of the total

[7] The City's bonus provisions are being challenged in *Ognibene v. Parkes*, 08-cv-1335 (S.D.N.Y.)(Swain, J.).

public funds distributed since 1997.[8]

In the most recent City election (2009), almost all primary candidates – 93 percent – financed their elections through the City's program, while 66 percent of all general election candidates participated.[9] In 2009's contest, the Public Advocate, the Comptroller, all five Borough Presidents, and all but two of the 51 City Council candidates who were elected to office participated.

In the six elections that year pitting participating candidates against high-spending non-participants, a participant won in three of the races and finished as close runners-up in the remaining three races. All of those races were competitive, and no winner finished more than 10 percentage points ahead of the runner up.

An analysis of the Program's bonus provisions, performed in January 2011, is annexed as Appendix A. Certain important trends are evident from the years covered (1989 – 2009). Most relevantly, this experience shows that high-spending non-participants are simply not forgoing speech opportunities in order to curb a participating opponent's bonus payments. As with Arizona's public financing system, actual campaign

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[8] *The Impact of High-Spending Non-Participants on the Campaign Finance Program* (2006), 8 http://www.nyccfb.info/PDF/issue_reports/High-Spending-White-Paper.pdf

[9] That 66 percent figure reflects certain anomalies, including the fact that 26 of 51 non-participants are candidates who had little or no campaign activity and failed to register with the CFB. If that group is excluded from the equation, the participation rate in the general election rises to 80 percent.

behavior establishes that non-participating candidates do not make decisions about their spending based upon the possibility of triggering bonus payments. If they were refraining from speaking, the data would show candidates spending up to, but not in excess of, the trigger amounts. However, the data reveals no such pattern.

- There have been 56 high-spending non-participants who have triggered bonus payments. They spent, on average, 5.5 times the bonus amount. More than half of them (33 of 56) spent more than double the trigger amount; one-fourth (14 of 56) spent more than six times the trigger.

- Of the 59 non-participating candidates who never triggered a bonus payment, the average non-participating candidate spent only 17.8 percent of the bonus trigger amount. Practically all of them (54 of 59) spent less than half the trigger amount.

- Only two non-participating candidates reported expenditures that brought them within five percent of the trigger amount, and both were candidates in the same race for City Council in 1997.

- The Tier 2 bonus was established before the 2005 elections to provide additional bonus funds to candidates facing extremely high-spending candidates (the Tier 2 trigger is six times the original Tier 1 bonus trigger). Since then, seven candidates

have triggered a Tier 1 bonus; none of those candidates even approached spending enough to trigger the Tier 2 bonus.

- Only four candidates have triggered a Tier 2 bonus since 2005. One candidate triggered the bonus with contributions (rather than expenditures), the other three exceeded the bonus level by substantial amounts.

Thus, non-participating candidates tend to spend far above, or far below, the bonus trigger, which strongly indicates their speech is not affected by bonus payments at all. There is, therefore, no evidence that the City's bonus provisions are inhibiting speech or otherwise affecting the First Amendment rights of non-participants.

The San Francisco Experience

In November 2000, San Francisco voters adopted a public financing program for their elected officials via a ballot measure. The measure, Proposition O, was placed on the ballot by San Francisco's independent Ethics Commission (the "Commission") in June 2000 following several months of hearings and consideration of numerous policy proposals to address the appearance of corruption in local government.

The immediate catalyst for Proposition O was the City's 1999 mayoral election, which featured an unprecedented amount of political contributions and spending, raising concerns about the appearance of corruption. Before, during, and

after the 1999 election, the public was readily aware that the mayoral race drew unusually high levels of campaign spending. The top four candidates received and spent over $7 million in private contributions, and independent committees spent approximately $2.6 million.[10] Press reports painted a picture of apparent corruption, highlighting specific examples of perceived corruption arising out of campaign spending in the race, including contributions and independent spending by several entities that won major contracts or legislative victories shortly before or after the campaign.[11]

Shortly after the election, the Commission launched a series of public hearings on San Francisco's campaign finance laws and the laws of other municipalities. As the Commission's Executive Director testified before the Board in April 2000, these hearings indicated that "the campaign finance system in San Francisco [was] in a state of crisis," in large part because of "concern

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[10] *See* Testimony of Virginia Vida, S.F. Ethics Commission Executive Director, before S.F. Board of Supervisors Finance Committee, February 16, 2000, http://www.sfethics.org/files/vida_2.16.00.pdf

[11] *See, e.g.*, Lance Williams and Chuck Finnie, *Brown Nets 'Soft Money' Windfall*, S.F. Examiner, Sept. 7, 1999; Bob Porterfield and A. Clay Thompson, *Zoning for Sale?*, S.F. Bay Guardian, January 5, 2000; Lance Williams and Chuck Finnie, *Gusher of 'Soft Money' a Bonanza for San Francisco Mayor*, S.F. Examiner, May 2, 2001; Lance Williams, Chuck Finnie, and Jenny Strasburg, *'Juice Politics' at City Hall*, S.F. Examiner, July 29, 2001. *Cf. Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 393, 395 (2000) (citing newspaper accounts to suggest that concerns about corruption and appearance of corruption supported state contribution limits).

about the appearance or perception of corruption in San Francisco politics" and "the perception that big money and big spending may influence the policymaking of those who are elected." As the hearings drew to a close, the Commission favored the establishment of a public financing program because the "public financing of campaigns actually enhances the democratic process" by encouraging more candidates to seek office, including their points of view in the public dialogue, and allowing candidates to spend their time and energy debating public policy instead of raising campaign donations. And the Commission concluded that public financing would "limit the influence, or the appearance of influence, of private contributions on policymaking."[12]

In crafting a public financing system, the Commission balanced the important goal of encouraging candidates to participate with the need to operate within San Francisco's financial constraints. From the outset, the Commission focused on whether using trigger mechanisms would accomplish that balance. After extensive debate, the Commission and its staff concluded that a trigger mechanism was critical to the success of the program because candidates were unlikely to participate unless the program allowed them to raise and spend money in response to opposition spending. Finally, on June 26, 2000, the Commission decided to submit the measure to the voters. Voters adopted the measure, and San

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[12] Testimony of Virginia Vida, S.F. Ethics Commission Executive Director, before S.F. Board of Supervisors (April 12, 2000), http://www.sfethics.org/files/vida_4.12.00.pdf, and before S.F. Board of Supervisors' Finance Committee (April 5, 2000), http://www.sfethics.org/files/vida_4.5.00.pdf.

Francisco implemented its public financing system for the first time in November 2002.

San Francisco's public financing program currently provides public funds to eligible candidates for Mayor and eleven-seat Board of Supervisors. To qualify for public financing, a candidate must raise a certain amount of money from a minimum number of San Francisco residents. S.F. Campaign & Gov'tal Conduct Code §§ 1.104(w), 1.140(b)-(c). Once they qualify, participating candidates receive an initial grant of public funds. *Id.* § 1.144(c)-(d).

Thereafter, to receive additional public funds, a participating candidate must first solicit campaign contributions from private sources. Once a participating candidate has raised private contributions, the City matches those contributions with public funds in predetermined ratios, initially on a four-to-one basis and then on a one-to-one basis. *Id.* § 1.144(c)(3), (d)(3). Thus, after the initial grant, for every additional dollar that participating candidates raise from private sources, the City matches those contributions with public funds.

As noted above, San Francisco's system also incorporates a "trigger" mechanism. Publicly financed candidates' fundraising efforts are initially subject to an upper limit, a spending cap referred to as an "individual expenditure ceiling." *Id.* § 1.140(b)(4),(c)(4). During the course of a campaign, a candidate's spending cap may increase based upon the level of spending in the race. The City must raise a candidate's spending limit when the sum of (1) third-party spending opposing the candidate, (2) contributions to one of the candidate's opponents, and (3) third-party spending

supporting the opponent exceed the publicly financed candidate's spending cap. *Id.* § 1.143(a)-(b). Once the City raises a candidate's spending cap, the candidate becomes eligible to collect additional private contributions and receive additional matching funds from the City on a dollar-for-dollar basis.

Since its adoption, San Francisco's public financing program has successfully attracted the participation of many credible candidates for local office. For example, in the November 2010 elections for members of the Board of Supervisors, 22 of the 46 candidates participated in the City's public financing program. And many of the participants won their races for open seats – three of the five were publicly financed. In the November 2008 Board of Supervisor elections, 19 of the 42 candidates for seven open seats qualified for public financing. Of the seven winning candidates, five had participated in the City's public financing program.

San Francisco's public financing system is supported entirely by taxpayer dollars. Both in the current climate of budget challenges and beyond, San Francisco must act as a responsible steward of public funds, using every available policy option that conserves money without compromising public programs. A trigger mechanism is a critical policy tool to achieve both goals. By providing publicly financed candidates with access to public funds in limited circumstances, i.e., only when they are in danger of being outspent by competing, non-participating candidates and third parties, and only when they are able to show continuing support from local donors, San Francisco provides only what is needed but no more. An alternative public

financing system that did not feature a trigger mechanism would risk either setting funding levels so low that no viable candidate would be interested in participating or spend public funds unnecessarily by over funding publicly financed candidates who face no challenge from credible opponents. In short, a challenge to trigger mechanisms is a challenge to the viability of public financing itself.

The City's first ten years of public financing indicate that trigger mechanisms neither chill political speech nor deter political spending in San Francisco. The relative levels of spending in San Francisco's Board of Supervisors elections have dramatically increased since the voters instituted public financing in 2000.[13] The growth in spending is demonstrated by a comparison of campaigns in November 2000 with recent campaigns in 2008 and 2010.[14] Over that decade, despite the public financing program's trigger mechanism, the aggregate amount of spending in Board elections has increased at a steady pace. In November 2000, when San Francisco held its last set of

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[13] Even though candidates for both the Board of Supervisors and Mayor may currently participate in the city's public financing system, the first election in which mayoral candidates could be eligible was held in 2007. In 2007, then-Mayor Gavin Newsom ran largely unopposed, and no candidate in the race qualified for public financing.

[14] Elections between 2002 and 2006 are not good comparators because during those election cycles, a local campaign provision unrelated to public financing limited contributions that could be made to third-party committees, thus lowering the amount of third-party spending generally. During the 2008 and 2009 elections, the Commission has not enforced that provision.

supervisorial elections prior to the advent of public financing, all eleven seats on the Board of Supervisors were up for election. Candidates in those eleven races raised approximately $4 million in campaign contributions and spent approximately $3.1 million of those funds. A variety of third-party groups spent approximately $1.5 million to support or oppose those candidates. On average, spending per open seat was approximately $420,000.

In 2008, with seven open Board seats, the candidates raised approximately $2.4 million in contributions and spent approximately $3.9 million, and third-parties spent $1.3 million. In that election, spending totaled an average of $740,000 per open seat.[15] And in 2010, with five open Board seats, candidates collected approximately $2.3 million in contributions and spent approximately $3.6 million, and third parties again spent $1.3 million. The average spending per open seat in that election was almost $1 million. In other words, the average spending per seat on the Board of Supervisors has risen dramatically in the years since San Francisco instituted public financing. The City's public financing system, and its trigger mechanism, has simply not deterred spending in local elections.

As these figures reflect, San Francisco's public financing system has not deterred non-participants from spending even though such activity results in a publicly financed candidate's eligibility for additional public funds. For example,

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[15] The expenditures in the 2008 and 2010 election cycles exceeded contributions because the City's public financing program increased the total amount of money available.

average per-race third-party expenditures leaped from approximately $136,000 in 2000 to $186,000 in 2008 to $260,000 in 2010. Every political committee spending money on these races understood that its spending could implicate the trigger mechanism and potentially increase the amount of public funds available to candidates whom the committee opposed. Indeed, the Ethics Commission regularly updates a public webpage with information about each publicly financed candidate's spending cap. Armed with that information, non-participants can determine whether their additional spending will result in an increased spending cap for their publicly financed political opponents. Yet there is no evidence that spending has been chilled at all. To the contrary, spending has increased significantly.

Apart from aggregate and average spending figures, discrete decisions in individual races further demonstrate that the City's public financing program and its trigger provisions do not deter political spending by non-participants. Candidates and third parties continue to spend freely despite the implications of their spending on their publicly financed opponents' spending caps. Two recent examples bear this out concretely.

In 2008, Supervisor David Chiu was a publicly financed candidate pursuing election to the Board of Supervisors. He was opposed by well-funded candidates who declined to participate in the City's public financing program. Applying the City's trigger mechanism, the Commission first raised his cap a month and a half before election day, making Chiu eligible for additional private fund-raising and matching public funds. Over the next six weeks, one competing candidate

nonetheless spent approximately $170,000 in favor of his candidacy even though it had the direct effect of further raising Chiu's ceiling. By election day, Supervisor Chiu's spending cap had been adjusted up from its initial level of $143,000 to $360,000 in response to this type of spending by his opponents. The City's trigger provision had no apparent effect on their campaign activity.

More recently, in 2010, Supervisor Scott Wiener, then a publicly financed candidate for the District 8 seat on the Board, faced a significant amount of independent spending opposing his candidacy. The Commission raised his spending cap from the initial $143,000 on September 28, 2010. Over the next month, third parties spent approximately $100,000 against him, even though it was evident that the spending would result in Wiener becoming eligible for additional matching public funds. Due to that spending, and other contributions and expenditures made opposing his candidacy, the Commission eventually raised Wiener's ceiling to $493,000.

Finally, San Francisco's public financing system has not faced any apparent "gaming" by its participants (Pet. Br., at 71-75). There have been no reported instances in which candidates seeking the same elective office were actively cooperating in order to trigger increases in the spending caps. Nor is there any evidence that third-parties have engaged in "reverse targeting" to benefit participating candidates.

Practical experience from both New York City and San Francisco therefore demonstrates that there is no empirical evidence to support the contention that non-participants restrain their

spending in order to avoid bonus payments to program participants they disagree with or seek to defeat.

ARGUMENT

NON-PARTICIPATING CANDIDATES AND THIRD PARTIES DO NOT CURTAIL THEIR SPEECH TO AVOID BONUS OR TRIGGER PAYMENTS TO PARTICIPATING CANDIDATES THEY OPPOSE, AND THOSE PAYMENTS THEREFORE POSE NO MORE THAN A MINIMAL BURDEN ON FIRST AMENDMENT RIGHTS. THE PROGRAMS ALSO ADVANCE THE IMPORTANT STATE INTERESTS IN COMBATING CORRUPTION, ENCOURAGING PARTICIPATION IN PUBLIC FINANCING PROGRAMS, AND FOSTERING ROBUST COMPETITION AND DEBATE IN THE POLITICAL PROCESS.

A. Based on the experience of San Francisco and New York City, there is no evidence that bonus payments deter campaign spending.

Petitioners ask this Court to accept, on faith alone, the premise that no "rational person" would want to raise and spend money if it means it would trigger additional public funds for his or her opponent, and that "anyone who takes ideas seriously" will be chilled by that prospect (Pet. Br., at 41). Many years of practical experience, however, demonstrate that trigger funds have no impact on the campaign spending of non-participants and third parties, as Arizona, New York City, San Francisco, and others can attest. That experience, moreover, confirms the propriety of applying an

intermediate level of scrutiny to Arizona's program, as the Ninth Circuit correctly determined.

In Arizona's experience, non-participating candidates either regularly spent beyond the matching-funds trigger, or spent so far below it that spending by non-participants was evidently unaffected by triggers and matching funds (Resp. Br., at 5, 15-16). Not surprisingly, the municipal experience further supports the conclusion that trigger mechanisms are unlikely, if ever, to deter protected First Amendment activity.

In the 59 New York City races where bonus payments were never reached, the non-participating candidates spent, on average, 17.8 percent of the bonus trigger amount. The vast majority fell more than 75 percent short of the trigger. There have been 56 high-spending non-participants who have triggered bonus payments. They spent, on average, 5.5 times the bonus amount. Four candidates have triggered a Tier 2 bonus since 2005.

San Francisco has also found that, in the first ten years of public financing, trigger mechanisms have neither chilled political speech nor deterred political spending. Indeed, the relative levels of spending in local races have significantly increased since the City's public financing program went into effect. Accounting for the number of open seats in each election cycle, political spending has sky-rocketed from $420,000 per race in 2000, the last election held prior to public financing, to $740,000 per race in 2008 and nearly $1 million per race in 2010. Moreover, an examination of spending decisions in the context of individual races demonstrates that non-participants continue to

spend freely, regardless of the effect that spending has on a publicly financed candidate's eligibility for additional public funds.

The Ninth Circuit's conclusion that Arizona's program poses, at most, a minimal burden on First Amendment rights, is thus supported not just by the facts in this Record, but, as explained above, by the experience of San Francisco and New York City as well. The many elections conducted under these independent municipal financing programs demonstrate that bonus payments do not influence a non-participant's spending or impact his First Amendment rights, because they have no apparent impact whatsoever on the quantity of a non-participant's speech. Non-participants are simply not reducing their speech in order to avoid triggering an opponent's opportunity to receive additional public funding.

B. Matching fund provisions also advance important and compelling government interests.

Public financing programs, and the bonus and trigger provisions found in New York City's and San Francisco's programs, advance several important and compelling interests.

The first is the government interest in combating actual corruption and the appearance of corruption created by campaign-related fundraising. A key component in all public financing programs is the requirement that participating candidates, in exchange for public financing, either relinquish or limit their right to raise campaign contributions from private donors, and also agree to spending limits. That alone

reduces opportunities and incentives "to trade legislative favors for financial favors," as the Ninth Circuit correctly found *McComish v. Bennett*, 611 F.3d 510, 526 (9th Cir. 2010). And as this Court recognized in *Buckley*, that furthers a significant governmental interest. 424 U.S. at 96. Tellingly, since its public financing program began, New York City has not experienced the "pay to play" corruption scandals that led the City Council to enact the program in the first place. And in San Francisco, participants have confirmed that the City's public financing program has reduced the pressure to spend all of their time on fundraising activities.

In addition, as acknowledged by several appellate decisions, encouraging participation in public financing programs is itself an important and compelling government interest. *See, e.g.*, *McComish*, 611 F.3d at 526; *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39-40 (1st Cir. 1993). If municipal public financing programs did not incorporate a trigger mechanism that assured participants that they could mount a competitive campaign, no credible candidates would participate. In other words, without triggers, public financing programs would simply fail due to a lack of interest.

Lastly, public financing programs create more speech and a more robust civic dialogue by fostering competition. Enhancing involvement in the political process is an important government interest because it honors "a profound national commitment . . . that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

More speech and discussion among candidates on issues of public importance is a matter of utmost civic importance and those conversations make "a healthy representative democracy flourish." *Buckley*, 424 U.S. at 93, n.127. Citizens in New York City and San Francisco have gained more confidence in the integrity of their elections, as shown by their willingness to participate in the political process, either as small donors or as candidates.

C. Trigger mechanisms are substantially related to those important and compelling government interests.

There is, moreover, ample practical experience showing a "substantial relation" between a matching funds program and the sufficiently important and compelling governmental interests discussed above. To draw the participation of strong candidates, public financing programs must ensure that those candidates will be able to mount competitive campaigns. If additional matching funds were not available, no fiscally responsible public financing plan could attract participants, because it would pose an enormous risk to participate in such a system.

In times of fiscal austerity, trigger mechanisms are the most prudent, reasonable, and narrowly tailored approach to an increasingly expensive and vexing problem for municipalities. These programs are obligated to allocate limited public funds in a non-partisan and equitable, content-neutral way. Targeting matching funds for the most competitive races accomplishes that goal most efficiently.

Moreover, the Constitution "does not require Congress to treat all declared candidates the same for public financing purposes." *Buckley*, 424 U.S. at 97. That is because legislative initiatives that enhance core First Amendment values by financing particular speakers "is the rule, not the exception. Our statute books are replete with laws providing financial assistance to the exercise of free speech, such as aid to public broadcasting and other forms of educational media, and preferential postal rates and antitrust exemptions for newspapers." *Id.* at 93, n.127.

In the concededly different yet nevertheless apt context of contribution limits, this Court has recognized that ensuring competitiveness is an important constitutional consideration. *See, e.g.*, *Buckley*, 424 U.S. at 21 (noting the "severe impact on political dialogue" that occurs when candidates are prevented from "amassing the resources necessary for effective advocacy"); *Randall v. Sorrell*, 548 U.S. 230, 248-249 (2006)("contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability"). That is because "enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process" contributes to freedom of expression. *CBS, Inc. v. FCC*, 453 U.S. 367, 396 (1981). The "silencing of a candidate has consequences for political debate and competition overall." *Shrink Mo.*, 528 U.S. at 420 (Thomas, J., *dissenting*).

Arizona's program does not restrict anyone's speech. But even if this Court found that it

somehow was a restriction, the Constitution "often permits restrictions on the speech of some in order to prevent a few from drowning out the many -- in Congress, for example, where constitutionally protected debate, Art. I, § 6, is limited to provide every Member an equal opportunity to express his or her views." *Shrink Mo.*, 528 U.S. at 402 (Breyer and Ginsburg, JJ., concurring). Effective electoral competition is the critical civic value here, because political discourse and democracy suffer when only one candidate has the resources to mount a competitive campaign.

That does not mean that the trigger provisions of these campaign finance programs are impermissibly egalitarian or intended to "level the playing field." Rather, they are a necessary building block for public financing. They are effective in bringing more candidates into the program, and that advances the legitimate, compelling and long-accepted government interest in campaigns that are free of corruption.

That is the intent and effect of Arizona's matching fund programs, as the Ninth Circuit correctly understood. Its order should be affirmed.

CONCLUSION

THE NINTH CIRCUIT'S JUDGMENT SHOULD BE AFFIRMED.

Respectfully submitted,

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NON-PARTICIPATING CANDIDATES AND THE BONUS PROVISIONS IN NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM

New York City Campaign Finance Board, February 2011

Spending by High Spending Non Participating Candidates Who Triggered Bonus

New York City Elections, 1989-2010

Year	Election	Candidate	Office	Boro. Dist.	"Trigger" Amount	Net Expend.	Expend. as % of "Trigger"
2009	General	Bloomberg, Michael*	Mayor		$3,079,001	$108,371,688	3519.1%
2005	General	Bloomberg, Michael*	Mayor		$2,864,000	$84,587,319	2953.5%
2001	Prim/Gen	Bloomberg, Michael	Mayor		$2,615,500	$73,109,266	2795.2%
1997	General	Erlanger, Andrew*	City Council	4	$30,000	$808,803	2696.0%
1993	General	Erlanger, Andrew*	City Council	4	$30,000	$623,914	2079.7%
1997	Primary	Dear, Noach*	City Council	44	$30,000	$544,954	1816.5%
1991	Prim/Gen	Duane, Tom	City Council	3	$30,000	$279,629	932.1%
1989	Primary	Lauder, Ronald	Mayor	-	$1,500,000	$13,789,869	919.3%
2001	Primary	Posner, Elana	City Council	1	$68,500	$582,529	850.4%
2009	Prim/Gen	Kim, Kevin	City Council	19	$80,501	$648,603	805.7%
1993	Primary	Dear, Noach*	City Council	44	$30,000	$228,375	761.3%
1993	Primary	Lasher, Howard	City Council	47	$30,000	$212,022	706.7%
1997	Primary	DeMarco, Michael*	City Council	13	$30,000	$204,977	683.3%
1991	Primary	Howard, Philip	City Council	2	$30,000	$185,193	617.3%
1991	Primary	Garson, Michael	City Council	48	$30,000	$137,506	458.4%
2005	Primary	Katz, Melinda*	City Council	29	$75,000	$331,304	441.7%
1997	General	Hirschfeld, Abraham	Boro Pres	Mn	$532,500	$2,274,801	427.2%
2009	Primary	Chou, Yen	City Council	20	$80,501	$304,849	378.7%
1997	General	Eisland, June*	City Council	11	$30,000	$103,973	346.6%
1991	General	O'Donovan, Jerome*	City Council	49	$30,000	$101,258	337.5%
1991	Prim/Gen	Dear, Noach*	City Council	44	$30,000	$96,210	320.7%
2009	Primary	Chain, Heidi	City Council	29	$80,501	$246,136	305.8%
1997	Prim/Gen	White, Jr., Thomas*	City Council	28	$30,000	$90,302	301.0%
1997	General	Spigner, Archie*	City Council	27	$30,000	$80,378	267.9%
1997	Primary	Wooten, Priscilla*	City Council	42	$30,000	$79,284	264.3%
1993	Primary	Spigner, Archie*	City Council	27	$30,000	$73,961	246.5%
2009	Special	Tabacco, John	City Council	49	$80,500	$189,953	236.0%
2008	Special	Crowley, Elizabeth	City Council	30	$80,500	$179,912	223.5%
1997	General	Pavman, Morton*	City Council	24	$30,000	$63,514	211.7%
1991	General	Goldstein, David	City Council	4	$30,000	$62,137	207.1%
1997	Primary	Addabbo, Jr., Joseph	City Council	32	$30,000	$61,581	205.3%
1991	General	Dehna, Joseph	City Council	43	$30,000	$61,335	204.5%
1991	Primary	Colon, Rafael*	City Council	17	$30,000	$60,258	200.9%
2005	Primary	Sanders, Jr., James*	City Council	31	$75,000	$147,783	197.0%
2001	Primary	Diaz, Ruben	City Council	18	$68,500	$116,770	170.5%
2009	Primary	Kallahara, Stanley	City Council	25	$80,501	$133,652	166.0%
1991	Primary	Gresser Jr., Lawrence	City Council	19	$30,000	$48,949	163.2%
1997	General	Fiala, Stephen	City Council	51	$30,000	$45,307	151.0%
1997	Prim/Gen	Harrison, Julia*	City Council	20	$30,000	$43,073	143.6%
1993	Primary	Williams, Enoch*	City Council	41	$30,000	$42,181	140.6%
1991	Primary	Valentino, Louis	City Council	38	$30,000	$42,153	140.5%
1991	Primary	McCaffrey, Walter*	City Council	26	$30,000	$42,020	140.1%
1991	Primary	Rivera, Jose*	City Council	15	$30,000	$41,898	139.7%
1991	Primary	Strauss, Sidney	City Council	29	$30,000	$40,837	136.1%
1993	General	Fisher, Kenneth*	City Council	33	$30,000	$39,146	130.5%

1991	Primary	Fratta, John	City Council	1	$30,000	$38,896	129.7%
1991	Primary	Cruz, Lucy	City Council	18	$30,000	$38,149	127.2%
1997	Primary	Perez, Fredence*	City Council	17	$30,000	$34,885	116.3%
1991	Primary	Mason, Vernon	City Council	7	$30,000	$34,168	113.9%
1991	Primary	Spigner, Archie*	City Council	27	$30,000	$32,905	109.7%
1991	Primary	Coleman, Dennis	City Council	18	$30,000	$32,602	108.7%
2001	Primary	Provenzano, Madeline*	City Council	13	$68,500	$71,834	104.9%
1997	General	Ryun, Chun Soo	City Council	20	$30,000	$31,136	103.8%
1993	General	McCaffrey, Walter*†	City Council	26	$30,000	$25,636	85.4%
1997	General	Golden, Howard*†	Boro Pres	Bx	$532,500	$390,448	73.3%
1991	Primary	Williams, Enoch*†	City Council	41	$30,000	$21,209	70.7%

* - Incumbent

† - Bonus was triggered by non-participant's contributions only

Note: Includes high-spending non-participating candidates who faced participating candidates in races where the Board declared a bonus. High-spending non-participants who were unopposed, faced only other non-participating candidates, or who faced participating candidates who did not qualify for public funds, are not included. Candidates who triggered a bonus payment for opponents in both a primary and general election are counted once for each election.

Spending by Non-Participating Candidates Who Triggered Tier 1 Bonus Payments
New York City Elections, 2005-2010

Year	Election	Candidate	Office	Boro/ Dist	"Trigger" Amount	Net Expend.	Expend. as a % of Tier 2 Trigger
2009	Primary	Kwan, Kin	City Council	19	$483,001	$309,994	64.2%
2009	Primary	Chou, Yen	City Council	20	$483,001	$304,849	63.1%
2009	Primary	Chan, Hed	City Council	29	$483,001	$246,136	51.0%
2009	Special	Tabacco, John	City Council	49	$483,000	$189,953	39.3%
2008	Special	Crowley, Elizabeth	City Council	30	$483,000	$179,912	37.2%
2005	Primary	Sanders, Jr., James*	City Council	31	$450,000	$147,783	32.8%
2009	Primary	Kalathara, Stanley	City Council	25	$483,001	$133,652	27.7%

Spending by Non-Participating Candidates Who Triggered Tier 2 Bonus Payments, New York City Elections, 2005-2010‡

Year	Election	Candidate	Office	Boro/ Dist.	"Trigger" Amount	Net Expend.	Expend. as a % of Tier 2 Trigger
2009	General	Bloomberg, Michael*	Mayor	-	$18,474,001	$108,371,688	586.6%
2005	General	Bloomberg, Michael*	Mayor	-	$17,184,000	$84,587,319	492.2%
2009	General	Kim, Kevin	City Council	19	$463,001	$648,603	134.3%
2005	Primary	Katz, Melinda*†	City Council	29	$450,000	$331,304	73.6%

* - Incumbent

† - Bonus was triggered by non-participant's contributions only

‡ - Tier 2 established by Local Law 58 of 2004

Spending by Non-Participating Candidates Failing to Trigger Bonus New York City Elections, 1989-2010

Year	Election	Candidate	Office	Boro/ Dist.	"Trigger" Amount	Net Expend.	Expend. as % of Trigger
1997	Primary	Kinard, Stanley	City Council	41	$30,000	$29,450	98.2%
1997	Primary	Boyland, Tracy	City Council	41	$30,000	$28,628	95.4%
1997	General	Solano, Reylando	City Council	13	$30,000	$22,241	74.1%
1993	General	Golden, Howard*	Boro Pres	Bk	$450,000	$298,946	66.4%
1993	Prim/Gen	Rosado, David	City Council	17	$30,000	$19,669	65.6%
1993	General	Harrison, Julia*	City Council	20	$30,000	$14,401	48.0%
2005	Primary	Jennings, Jr., Alan*	City Council	28	$75,000	$32,191	42.9%
1997	Primary	Borzellieri, Frank	City Council	30	$30,000	$12,742	42.5%
1993	Prim/Gen	Kloberdanz, Barbara	City Council	5	$30,000	$11,569	38.6%
1991	Primary	Dorsa, Joseph	City Council	19	$30,000	$10,922	36.4%
1997	General	Scala, Frank	City Council	1	$30,000	$10,514	35.0%
1991	Primary	Krongold, Martin	City Council	38	$30,000	$9,797	32.7%
2005	Primary	Ampry-Samuel, Alicka	City Council	41	$75,000	$22,970	30.6%
2001	General	Strougo, Robert	City Council	5	$68,500	$20,864	30.5%
2010	Special	Caller, Carl	City Council	44	$84,000	$24,061	28.6%
2009	Primary	Facundo, Luis	City Council	10	$80,501	$18,267	22.7%
2001	General	Karako, Jak	City Council	4	$68,500	$14,483	21.1%
2010	Special	Jennings, Jr., Alan	City Council	28	$84,000	$17,335	20.6%
2007	Special	Eugene, Mathieu	City Council	40	$75,000	$15,170	20.2%
1993	General	Mangano, Rosemarie	City Council	51	$30,000	$6,060	20.2%
1991	Primary	Mazzarello, Fred	City Council	19	$30,000	$5,660	18.9%
2005	Prim/Gen	Flores, Rodolfo	City Council	25	$75,000	$11,672	15.6%
1993	General	Martin, George	Mayor	-	$2,000,000	$270,924	13.5%
1991	Primary	Eatmon Jr., Andrew	City Council	17	$30,000	$4,034	13.4%
2009	Primary	Jennings, Jr., Alan	City Council	28	$80,501	$10,003	12.4%
2001	General	Chwat, Norbert	City Council	29	$68,500	$7,649	11.2%
1997	General	Salazar, Rod	City Council	6	$30,000	$2,934	9.8%
1991	Primary	Dechter, Hyman	City Council	2	$30,000	$2,602	8.7%
2001	General	Mercado, Julio	City Council	34	$68,500	$4,927	7.2%
2001	General	Vazquez, Jorge	City Council	34	$68,500	$4,927	7.2%
2009	General	Goldberg, Joshua	City Council	6	$80,501	$5,646	7.0%
2002	Special	Martinez, George	City Council	38	$75,000	$5,000	6.7%

2001	General	Grupico, Sal	City Council	45	$68,500	$3,793	5 5%
2001	General	Herschaft, Allen	City Council	48	$68,500	$3,611	5 3%
1997	General	Shanahan, Mary Lou	City Council	51	$30,000	$1,329	4.4%
1993	General	Brown, Marilyn	City Council	24	$30,000	$1,227	4 1%
2003	Prim/Gen	Park, Terence	City Council	22	$75,000	$2,977	4 0%
1993	General	Reiss, Elaine	Boro Pres.	Mn	$450,000	$17,345	3 9%
2001	Primary	Pope, Sandra	City Council	27	$68,500	$2,534	3.7%
1997	General	Piker, Joan	Boro Pres	Mn	$532,500	$18,350	3 4%
1997	Primary	Ceretti, Anthony	City Council	43	$30,000	$1,000	3 3%
2001	General	Jereski, Robert	City Council	4	$68,500	$1,919	2.8%
1997	General	Mc Avoy, Annemane	Comptroller	-	$1,479,000	$18,203	1.2%
1991	Primary	Cavaco Jr , Manuel	City Council	1	$30,000	$346	1 2%
2005	General	Gonzalez, Miguel	City Council	37	$75,000	$624	0 8%
1993	General	Richman, Martin	Boro Pres.	Bx	$450,000	$3,589	0.8%
2001	General	Rexach, Nilda Luz	City Council	10	$68,500	$485	0 7%
2009	Primary	Grays, Lou	City Council	31	$80,501	$509	0 6%
2009	General	Villar, Francisca	Mayor	-	$3,079,001	$10,527	0 3%
1997	Primary	Green, Roger	Pub. Advo	-	$1,479,000	$3,186	0 2%
1997	Primary	Rogers, Roland	Mayor	-	$2,366,000	$4,635	0 2%
1993	Primary	Braggs, Monica	Boro Pres	Bx	$450,000	$595	0 1%
2009	General	Horvath, Irene	City Council	1	$80,501	$56	0 1%
1993	General	Falk, Bob	Pub. Advo	-	$1,250,000	$568	0 0%
2009	Primary	Rogers, Roland	Mayor	-	$3,079,001	$205	0 0%
2001	General	Agosto, Jonathan	City Council	16	$68,500	$0	0 0%
1993	General	Augustin, Owen	City Council	40	$30,000	$0	0 0%
2001	General	McManus, Patrick	City Council	17	$68,500	$0	0.0%
2001	General	Perez, Aida	City Council	17	$68,500	$0	0 0%

* - Incumbent

Note: Includes only non-participating candidates who were opposed by participants *and* reported itemized financial activity to the city or state Board of Elections or the Campaign Finance Board. During the same period, there were an additional **267** non-participating candidates opposed by participants who reported no itemized contributions or expenditures.

Spending by Non-Participating Candidates as a Percentage of the Bonus Trigger, New York City Elections, 1989-2010